



Planning Commissioner 101: Just the Basics

Planning Commissioner Training
Alaska Chapter American Planning
Association 2019 Conference
January 13, 2019

What is a Planning Commission?

- Established by AK state statute (Title 29)
- The planning commission is a body of citizens that serve local government. The commission is an advisory group to the governing body on issues and activities related to planning, platting, and land use regulation and community development in general. The planning commission is responsible for keeping planning and land use-related topics and issues in perspective for the community and should not become lost in the daily decisions and details of life (AK Planning Commission Handbook).

AS 29.40.020. Planning Commission.

(a) Each first and second class borough shall establish a planning commission consisting of five residents unless a greater number is required by ordinance. Commission membership shall be apportioned so that the number of members from home rule and first class cities reflects the proportion of borough population residing in home rule and first class cities located in the borough. A member shall be appointed by the borough mayor for a term of three years subject to confirmation by the assembly, except that a member from a home rule or first class city shall be selected from a list of recommendations submitted by the council. Members first appointed shall draw lots for one, two, and three year terms. Appointments to fill vacancies are for the unexpired term. The compensation and expenses of the planning commission and its staff are paid as directed by the assembly.

(b) In addition to the duties prescribed by ordinance, the planning commission shall

(1) prepare and submit to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough;

(2) review, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.40 040.

Roles and Responsibilities of the Planning Commission

- Represent the Community Perspective(s)
- Both decision-makers and act in advisory capacity
- AS 29.40.020
 - Comprehensive Plan
 - Implementing Regulations (AS 29.40.040)
 - Review
 - Recommend
 - Administer
- AS 29.40.040
 - Zoning Regulations
 - Discretionary Land Use Permits
 - Measures to further the goals and objectives of comp plan

Legal Basis for Planning Decisions

- Federal and state constitutions
- State enabling legislation (AS 29)
- Municipal charter
- Local regulations
- Procedures in your code
- Commission bylaws or rules.

AS 29.40.030. Comprehensive Plan.

(a) The comprehensive plan is a compilation of policy statements, goals, standards, and maps for guiding the physical, social, and economic development, both private and public, of the first or second class borough, and may include, but is not limited to, the following:

- (1)** statements of policies, goals, and standards;
- (2)** a land use plan;
- (3)** a community facilities plan;
- (4)** a transportation plan; and
- (5)** recommendations for implementation of the comprehensive plan.

(b) With the recommendations of the planning commission, the assembly shall adopt by ordinance a comprehensive plan. The assembly shall, after receiving the recommendations of the planning commission, periodically undertake an overall review of the comprehensive plan and update the plan as necessary.

What is a Comp Plan?

The comprehensive plan is a blueprint for guiding development in a community. It includes information on population dynamics and demographics, physical conditions, land use, the environment, transportation, public facilities, open space, and legal and fiscal aspects. The plan reflects the vision and direction of residents. The comprehensive plan's vision, goals, objectives, policies, and implementation strategies provide a framework for decision-making regarding land use, transportation, housing, public facilities, and economic development.

- Based on predictions of needs and resources for a period of time
- Not a new concept
- No national standard
- Called by many different names
- Defined by individual state legislation

General Purposes for a Comp Plan

- Source of information
- Program for correction
- Estimate of the future
- Indicator of goals
- Technique for coordination
- Device for stimulating public interest and responsibility
- Guide for Planning Commission decisions

3 Major Premises of Comp Plans

1. Comprehensiveness

- Scope of concerns
- Interaction between elements of development

2. Policy

- Statement of interests or position
- Commitment to desired goals

3. Projection

- Identify gap between current and desired conditions
- Indices of change
- Measure of performance

The Challenge of Implementation

➤ **How to achieve the goals of the plan**

- Process of ideas (plan)
- Covert to process of doing (implementation)

➤ **Primary methods to implement the plan**

- Zoning
- Other land use regulations
- Subdivision process
- Public works/ capital improvements
- Protections of mapped streets

AS 29.40.040. Land Use Regulation.

(a) In accordance with a comprehensive plan adopted under AS 29.40.030 and in order to implement the plan, the assembly by ordinance shall adopt or amend provisions governing the use and occupancy of land that may include, but are not limited to,

(1) zoning regulations restricting the use of land and improvements by geographic districts;

(2) land use permit requirements designed to encourage or discourage specified uses and construction of specified structures, or to minimize unfavorable effects of uses and the construction of structures;

(3) measures to further the goals and objectives of the comprehensive plan.

Making the Comp Plan Connection

1. Read, discuss, and understand your Plan
2. Decide on level of detail/specificity desired in your Plan
3. Update the Plan periodically
4. Allow for added elements
 - Neighborhood and/or community plans
 - Economic development
 - Continuity Plan/Disaster Recovery Plan
 - Trail Plan or Parks and Recreation Plan
 - Solid Waste or Recycling Plan

Making the Comp Plan Connection, cont.

5. Examine your implementing regulations

- Achieving your Goals?
- If not, why?
- How can they be improved?
 - More Specific
 - Decision Criteria
 - Definitions
 - Too vague
 - Broad enough to accommodate change over time
 - Code expressly authorizes interpretation
 - Use specific standards

6. Use Plan Routinely

- Staff Reports
- Findings



QUESTIONS?

Michelle McNulty, AICP
Planning Director, Municipality of Anchorage
(907) 343-7901
mmcnultymj@muni.org



Findings of Fact

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What are findings?

- Road map for getting to decision made
 - Standards
 - Evidence
 - Reasoning
- State whether permit granted or denied
 - Conditions or limitations
 - Whether evidence rejected because unreliable



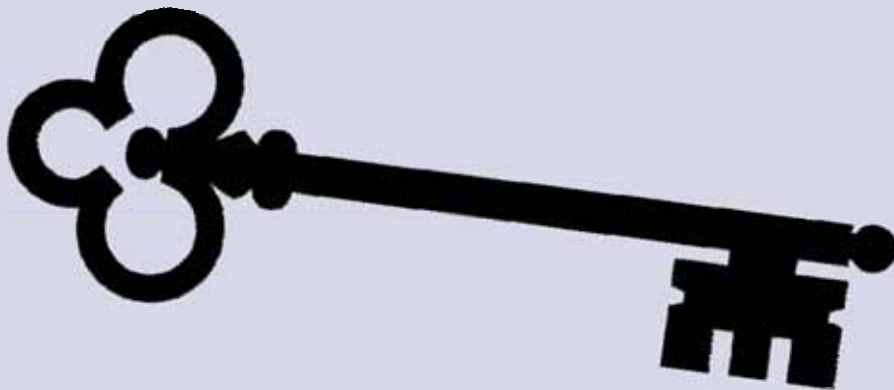
What findings tell you

The five  s:

- Who
- What
- When
- Where
- Why

Key Elements

- An identification of the parties, property, and the requested action (i.e., permit, variance, plat).
 - Frames the issues.
- A list of the witnesses, documents, and exhibits relied upon.
 - Use only evidence that was introduced at the hearing.
 - Personal knowledge may only be used if it is commonly shared by others in the community.
 - Knowledge that is not widely shared may be used, as long as it is announced and the parties are to rebut it.
- An identification of the standard established by the ordinance for the action requested by the applicant.
 - I.e. Undue hardship, public safety, or exceptional circumstances.
- An explanation, fact by fact, why the evidence does or does not establish that the standard has been met.
 - Even if the court disagrees with the commission's judgment, it is likely to uphold the decision if it feels that a hard look was taken at all the evidence.
- If a permit or variance is granted, a description of it with any conditions.





QUESTIONS & DISCUSSION



State of Alaska

DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT





Alaska Planning Commission





DCRA

***an agency with the
constitutional responsibility to
advise and assist local
governments***





Commission Member Duties

- Participate in all issues
- Consider views
- Focus on policy, *not* politics
- Discussion leads to growth
- Civility



Duties of the Commission

- Comprehensive Plan
- [Platting Authority](#)
- Land Use Regulations
- [Rezone of Property](#)
- Variances and Land Use Permits
- [Land Acquisition and Disposal](#)
- Appeals from Administrative Decisions
- [Capital Improvements](#)
- Annual Planning Budget
- [Planning Departments Work Program](#)
- Public Meetings and Hearings
- [Initiate Planning Projects](#)
- Coordinate with other Agencies' plans
- [Other Duties as Authorized by Ordinance](#)

Reference Booklet pages 4-6





Planning Commission Roles #1

1. Advisory Role



Reference Booklet page 13



Planning Commission Roles #2

2. Regulatory Role



Reference Booklet page 13



Planning Commission Roles #3

3. Procedural Role



Reference Booklet pages 13-15



Ethics

- Ex Parte Contact
- Conflicts of Interest: *direct & financial*
- How to correct Ex Parte

Reference Booklet pages 43-47



Ethics by Alaskan Statute

- Improper Gifts
(AS 39.52.130)
- Improper Use/Disclosure of Info
(AS 39.52.140)
- Nepotism and/or Cronyism
(AS 39.90.020)
- Conflict of Interest
(AS 29.20.010)



Example Situation

Voting whether to recommend a holiday to honor those lost at sea.





Example: Conflict & Result

One member is a fisherman. The member declares the potential conflict...

Conflict?!



Member votes unless others override.

...and the chair decides.

No, no.

Chair



Example #2 Situation

**Voting whether to
recommend an area is
rezoned commercial.**



Example #2 Potential Conflict of Interest

A home in the zone belongs to a commission member.





Example #2 Result

The member declares the potential conflict...
...and the chair decides.

Conflict?!



Yes, yes.

Chair



Meetings

The Open Meetings Act

Reference Alaska Statute 44.62.310 & Booklet page 43



Meetings

Meeting Definition and Types

Executive Sessions

Reference Alaska Statute 44.62.310 & Booklet page 43

Reference AS 44.62.310(c) & Booklet page 49



Parliamentary Procedure

Role of the Chair





Parliamentary Procedure

Parliamentary Procedure





Meeting Procedures

8 steps in a *motion*

- | | |
|---|--|
| 1. <i>Attention of the chair</i> | 5. <i>Chair restates motion</i> |
| 2. <i>Recognized</i> | 6. <i>Debate</i> |
| 3. <i>Propose motion</i> | 7. <i>Vote</i> |
| 4. <i>Second</i> | 8. <i>Announce result</i> |



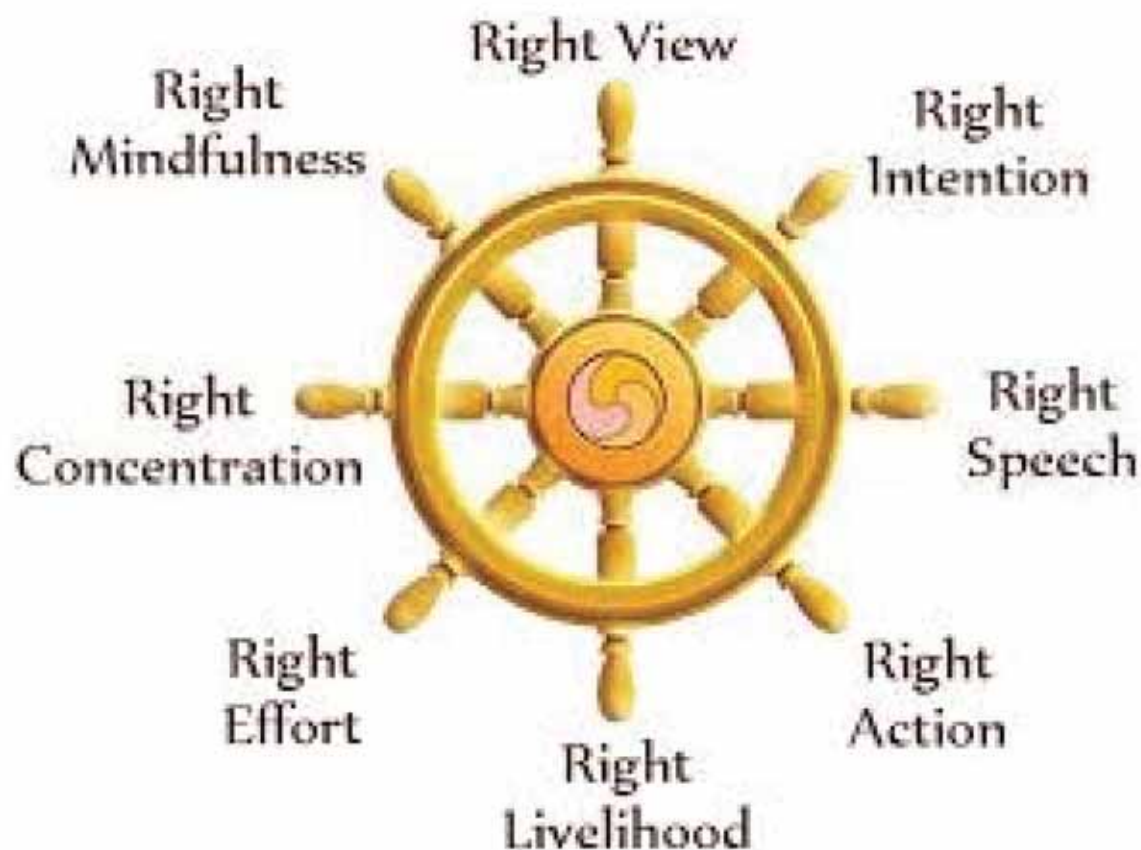
Meeting Procedures

Types of *Motions*

- Main
- Subsidiary
- Incidental
- Privileged
- Bring a Q Again

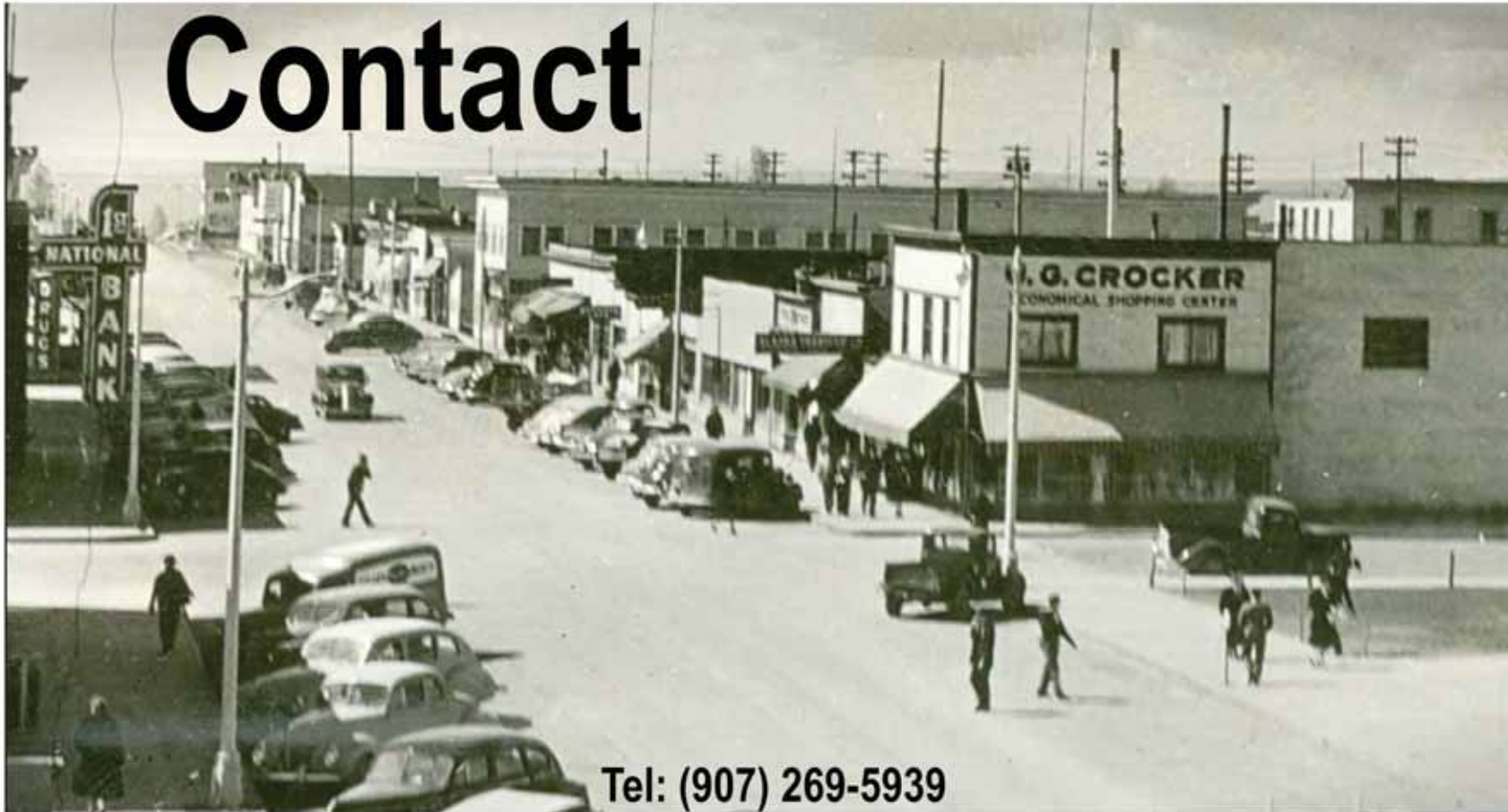


4 Principles





Contact



Tel: (907) 269-5939

Email: brenda.hewitt@alaska.gov

Facebook: DCRA-Local Government Assistance

Web: www.commerce.alaska.gov/web/dcra

2019 ALASKA PLANNING CONFERENCE ATTORNEY PRESENTATION

January 13, 2019

Trina Sears, Assistant Borough Attorney
Matanuska-Susitna Borough



AGENDA

- I. Zoning – The beginning
- II. Title 29 and the role of the Planning Commission
- III. Planning Commission – Legislative Role
 - A. Overall constitutional considerations
 - B. Heightened scrutiny for some types of zoning rules
 - C. Legal Non Conforming Uses – Constitutional Considerations
- IV. Planning Commission – Quasi Judicial Role
 - A. Ethics and Due Process
 - B. Substantial Evidence
 - C. Findings of Fact

THE ORIGINS OF ZONING IN THE LAW

- Trespass and Nuisance Claims
 - Restrictive covenants
- Euclid and traditional zoning plans

TITLE 29 AND THE ROLE OF THE PC

AS 29.40.020

- (b) In addition to the duties prescribed by ordinance, the planning commission shall
- (1) prepare and submit to the assembly a proposed comprehensive plan in accordance with AS 29.40.030 for the systematic and organized development of the borough;
- (2) review, recommend, and administer measures necessary to implement the comprehensive plan, including measures provided under AS 29.40.040.
-

Alaska Stat. Ann. § 29.40.020 (West)

TITLE 29 AND THE ROLE OF THE PC

Comprehensive Plan Must Include:

- Statement of policies, goals, and standards
- Land use plan
- Community facilities plan
- Transportation plan
- Recommendation for implementation

Comprehensive Plan guides the physical, social and economic development, both private and public, of the first or second class borough.

TYPES OF PLANNING DECISIONS

- Quasi-judicial
 - Apply standards that are subjective.
 - The burden of proof is on the applicant
 - Hearing required and decision is appealable
 - Examples include: variances, conditional uses, subdivision plats, appeals of administrative decisions

TYPES OF PLANNING DECISIONS

➤ Legislative

- The PC acts in an advisory capacity
- PC recommendations should be based on the comprehensive plan
- Actions are adopted by elected officials
- Decisions make law or establish community goals, policies, and standards
- Rules of *ex parte* communication do not generally apply
- Examples include: ordinances, highway projects, plans, resolutions

LEGISLATIVE DECISIONS

- **The Planning Commission advises the Assembly on legislative matters. Under state law these include adoption of the comprehensive plan and amendments to that plan, as well as “measures necessary to administer the plan,”**

AS 29.40.020(b).

PLANNING COMMISSION – LEGISLATIVE ROLE

Overall Constitutional Considerations

- Great deference given to legislative decisions.
- The standard is whether the legislation is arbitrary, unreasonable, discriminatory.
- Courts look at whether the legislation bears a substantial relationship to the public health, safety, morals, or general welfare.

PLANNING COMMISSION – LEGISLATIVE ROLE

Spot Zoning

Violation of Substantive Due Process

Test to determine whether unlawful spot zoning:

1. Consistency with comprehensive plan
2. Benefits and detriments to community, neighbors, and lot owner
3. Size of area rezoned

Example: Balough v. FNSB

PLANNING COMMISSION – LEGISLATIVE ROLE

Heightened Scrutiny

First Amendment Legislation - allowed to regulate time, place, manner

- 1. Justified without reference to the content**
- 2. Narrowly tailored to serve significant government interest**
- 3. Leave open ample alternative channels**

PLANNING COMMISSION – LEGISLATIVE ROLE

Legal Non Conforming Uses

Fifth Amendment considerations - private property cannot be taken for public use without just compensation.

Preexist prior to legislation

Grant them legal status to avoid constitutional violation

PLANNING COMMISSION – QUASI JUDICIAL ROLE

- **“Quasi-judicial Action – a judicial action taken by a public person [an official] or body (i.e., the planning commission) who is not a judge. It involves an official decision on the respective rights or claims of parties appearing before the body making the decision.”**

From the Alaska Planning Commission Handbook, at p. 70, formerly found on the State of Alaska website at <http://www.commerce.state.ak.us>.

QUASI-JUDICIAL

The hearings of the planning commission are administrative hearings.

Due process must be provided for the participants in administrative hearings, including the applicant, citizens, and other private entities, if they are parties.

Process that is due:

- 1) Adequate notice,
- 2) Opportunity to be heard,
- 3) Impartial decision maker,
- 4) Opportunity to appeal (preserve the record).

DUE PROCESS

"No person shall... be deprived of life, liberty, or property, without due process of law;..." Fifth Amendment to the US Constitution

Due process rules are those that the courts have found necessary to ensure that a person whose rights are at stake in a governmental proceeding receives the process that is due them.

What does this mean in the context of planning?

- Land use involves private property rights
- Right to have a fair hearing or an opportunity to be heard and defend against any proposed action to be taken

COMPONENTS OF DUE PROCESS

1. *Procedural Due Process*: Before any person is deprived of life, liberty, or property, they must be given a fair hearing or opportunity to be heard and defend against the proposed action to be taken against him.
 - Recurring principle of fairness
 - Public notice must be provided well in advance of the meeting and notice be sufficient that:
 - All interested persons are aware of the matter
 - Location where additional information may be obtained is identified
 - Information about when and where to participate is provided
 - Receive a fair hearing before an impartial tribunal
 - Orderly, well-run hearing at a reasonable time and at a reasonable location.
 - Interested persons must be given a reasonable opportunity to present their case
 - A record of the public process must be kept
 - Including all information/evidence used in the decision (staff reports, minutes, testimony, referenced documents)
 - Actual decision made (motions, votes, amendments, reconsiderations)

COMPONENTS OF DUE PROCESS

2. *Substantive Due Process*: No person may be deprived of life, liberty, or property under circumstances that are unreasonable, arbitrary, or capricious.
- Recurring principle of reasonableness
 - Major limitation on the police power of the states and is relevant to the concepts of takings
 - Reach a fair decision, not arbitrary or capricious
 - All decisions are based on the facts in the case
 - Lack of required due process in a commission proceeding forms the basis for the reversal of a commission decision.

Variances

➤ Generally means a departure from the numerical standards of this title

Alaska Statute prohibits:

- Special conditions that require the variance are caused by the person seeking the variance
- The variance will permit a land use in a district in which that use is prohibited
- The variance is sought solely to relieve pecuniary hardship or inconvenience

Local Code

- Special conditions exist which are peculiar to the land involved and which are not applicable to other land in the same zoning district
- Strict interpretation of the provisions of the zoning ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the zoning ordinance

ETHICS

[O]ne of the fundamental premises inherent in the concept of an adversary hearing ... is that neither adversary be permitted to engage in an *ex parte* communication concerning the merits of the case with those responsible for the decision. It is difficult to imagine a more serious incursion on fairness than to permit the representative of one of the parties to privately communicate his recommendations to the decision makers.... We are of the opinion that due process forbids it. (Citations omitted.)⁴

The Alaska Administrative Procedure Act, AS 44.62.630, states:

The functions of hearing officers and those officers participating in decisions shall be conducted in an impartial manner with due regard for the rights of all parties.... These officers ... may not engage in interviews with, or receive evidence or argument from, a party, directly or indirectly, except upon opportunity for all other parties to be present.

Louisiana Pac. Corp. v. Koons, 816 P.2d 1379, 1382–83 (Alaska 1991)

ETHICS

- **Ex parte . . . [Latin “from the part”]
On or from one party only, usually without notice to or argument from the adverse party <the judge conducted the hearing ex parte>.**

Black’s Law Dictionary, Eighth Edition

ETHICS

- **“Commission members shall be impartial in all administrative decisions, both in fact and in appearance. . . .”**
- MSB 15.08.150(B).
- **“[A]dministrative hearings must not only be fairly conducted, but must also give the appearance of complete fairness.”** *State v. Lundgren*, 603 P.2d 889, 895-96 (Alaska 1979).
- **“No member may receive or engage in ex parte contact with the applicant or appellant, or other parties interested in the application or appeal, or members of the public, concerning the application or appeal or issues presented in the application or notice of appeal, . . .”**
- MSB 15.08.150(B).

OK, so I had an ex parte
communication. What now?

Answer: It depends.

ETHICS

You encounter a neighbor in the supermarket, and he or she asks about a quasi-judicial matter presently before the board.

You say to the person: “I cannot talk about that, I am on the Planning Commission.” There is no more conversation and no specific information was exchanged.

- Should this ex parte contact be disclosed?
- Can it be addressed?
- How?

ETHICS

You received your packet and there is a CUP on the agenda for the next meeting. You then receive an e-mail from a member of the public about the CUP, with some data or other information in it.

- **Should this ex parte contact be disclosed?**
- **Can it be addressed?**
- **How?**

ETHICS

You were a seated commissioner who heard all of the public testimony on a matter. One of the parties calls you at home to argue points in the case you heard. You and this party talk for an hour about the case and the hearing. The next meeting is planned for the board to deliberate.

- **Should this ex parte contact be disclosed?**
- **Can it be addressed?**
- **How?**

ETHICS

SITE VISITS

- When a commissioner sitting on a quasi-judicial matter conducts research or fact gathering on his or her own, that is “independent investigation.”
- Is this O.K. as long as the commissioner shares the information learned with the other commissioners at the next meeting and in public?
- Why not?

ETHICS

- What if I live next to the site, and regularly pass it on my nightly walks?
- What if I want to do a drive by?
- What if I want to set up a meeting with the owner for a special viewing?

DECISION-MAKING

The Planning Commission must “set forth findings to bridge the analytical gap between the raw evidence and the ultimate decision or order.”

Fields v. Kodiak City Council, 628 P.2d 927, 933 (Alaska 1981).

WHAT ARE FINDINGS?

- Findings of fact are statements of fact that a commission believes are true and that provides a basis for granting, denying or conditioning a permit.
- They are the roadmap that shows the reasoning process that got the commission from the evidence presented to its final conclusion to grant or deny the applicant's request.

(Alaska Planning Commission Handbook at p. 27, available at www.commerce.state.ak.us)

LEGAL CONCLUSIONS

Findings of Fact

Legal authority

Evidence/Record

The record to be considered by the commission is the collection of all the evidence presented to or considered by the administrative board. [Alvarez v. Ketchikan Gateway Borough, 28 P.3d 935 \(Alaska 2001\).](#)

It includes the application, staff report, public and agency comments, public testimony

LEGAL CONCLUSIONS

- Substantial Evidence

MSB Code 15.39.210 provides:

...

(B) The BOAA shall defer to the judgment of the decision maker regarding findings of fact if they are supported by substantial evidence.

(C) Where the BOAA decides that a finding of fact made by the decision maker is not supported by substantial evidence, the BOAA shall make its own finding on the factual issue, based upon the following:

- (1) The evidence in the record developed before the decision maker; or
- (2) The record developed at a de novo hearing before the BOAA; or
- (3) A combination of the record developed in paragraphs (1) and (2).

LEGAL CONCLUSIONS

Weighing Public Comment

- Relevance
 - Relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Alaska Evid. R. 401
- Opinion – admissibility and when to consider
 - Personal knowledge. Alaska Evid. R. 601.
 - Opinion is admissible when it is “rationally based on the perception of the witness and helpful to a clear understanding of the witness’s testimony or the determination of a fact in issue.” Alaska Evid. R. 701.
- Speculation
 - General public opposition.
South Anchorage Concerned Coalition, Inc. v. Coffey, 862 P.2d 168 (Alaska 1993).

What should be in findings? (cont.)

- ⦿ Whether the standard has been met by the facts,
 - if there was no evidence on one or more of the elements the lack should be stated ;
 - if certain evidence was rejected because it was believed to be unreliable or unbelievable it should be so stated;
- ⦿ Whether the entitlement or permit is granted or denied;
- ⦿ If there are special conditions or limitations to be imposed on the permit, the facts that support those conditions
- ⦿ Also – organize findings in a logical and comprehensive way so that it helps the reviewer to better understand your work.

TRY TO AVOID

- Try to avoid simply reciting who said what or what an exhibit is suppose to establish unless it is a critical part of the analysis (Instead of the findings stating that Mr. Blue testified that the development will cause chemical z to drain into the river – a proper finding is that if constructed the development will cause chemical z to drain into the river).
- Try to avoid simply mimicking statutory language.
- Try to avoid unnecessary findings.
- Try to avoid findings that are inconsistent with one another.

POINTER

- Bring a list of the elements of the code that are at issue for the CUP etc.
- Leave plenty of space between each element to take notes
- Divide the space between each element into two categories
- Take notes during the testimony in the pertinent section
- Refer to you notes when the commission discusses whether to grant or deny the request

EXAMPLE

- Variance Request Elements:
- (1) There are unusual conditions or circumstances that apply to the property.
- (2) The strict application would deprive of rights commonly enjoyed by other properties.
- (3) It will not be injurious to nearby property, not harmful to the public welfare.
- (4) It will be in harmony with the objectives of the title and any comp plan.
- (5) The deviation will be no more than is necessary to permit reasonable use of the property.

EXAMPLE-VARIANCE REQUEST

Testimony that supports unusual circumstances

- -Applicant testified there is a large rock outcropping that limits the applicant's developable area of the lot to the northern 1/3 of the lot.

Testimony that does not Support unusual circumstances

- Neighbor Mr. B testified that the rock outcroppings are typical in the lots throughout the subdivision, and is only .001 of an acre larger than the one that exists on the neighboring property.

HOW ARE FINDINGS ADOPTED?

- By motion
- When?
 - (1) The night of the initial public hearing

Benefits

- the evidence has just been heard and is fresh
- efficiency-will assist meeting certain deadlines

Potential Downfalls

- may only have one set of findings
- it may be time consuming if commissioners have to redraft all new findings (i.e. if different from draft provided by staff)
- may lack organization and clarity since drafted impromptu
- may be incomplete or not as comprehensive

How are findings adopted? (cont.)

(2) At the subsequent proceeding after a continuation

Benefits

- can request staff and or the applicant to draft findings and provide them to use to consider
- more time to organize thoughts and prepare findings

Potential Downfalls

- days or weeks have lapsed since evidence was presented and no longer fresh in commissioners' memories
- may have timeframes for decisions that need to be met and may be challenging if continued

WHAT IS A CONCLUSION OF LAW?

- The statement of the commission as to the law applicable based on the facts.

EXAMPLE

Variance:

- (1) The fact that the property is half the size of any other parcel in the subdivision is an unusual condition.
- (2) The strict application of this title would deprive the applicant of rights commonly enjoyed by other properties because the applicant would be unable to place a habitable structure on the property.
- (3) It will not be injurious to nearby property, nor harmful to the public welfare because there will still be a setback from the property line.
- (4) It will be in harmony with the objectives of the title and any comp plan because there will still be a setback from the property line.
- (5) The deviation will be no more than is necessary to permit reasonable use of the property because the variance will only allow the applicant to encroach upon 2 feet of the 10 foot setback.

FINDINGS

Examples

- Yang v. County of Carver
 - Slaughter house as farm-related business.
 - Public comments that CUP will generate noise and traffic or have detrimental effect on property values - "Speculative comments do not provide a factual basis for the findings." Also, "neighbors' general objections to [CUP] are not competent evidence to support denial." Conjecture and speculation are not enough to deny.
- Innovative 55, LLC. v. Robeson County
 - Solar farm to operate in farm community.
 - Applicant presented experts as to safety, design, landscaping.
 - Neighbors testified – unattractive, unsafe, near historic church, and provided petition.
 - Speculative and general lay opinions do not constitute competent evidence.

CONDITIONS OF APPROVAL

- “Generally, a board of adjustment or similar body can impose appropriate conditions and safeguards in accordance with zoning ordinances relative to permits, variances, non-conforming uses or other matters subject to the board’s jurisdiction.” 8 A McQuillin Mun. Corp. § 25.271 (3rd Ed. 2009).

CONDITIONS OF APPROVAL

- The conditions must be reasonable and not arbitrary, unnecessary or oppressive; they must not be indefinite, they must be directly related to and incidental to the proposed use of the property, and they must be within the legal authority of the board to impose. Nor does the discretion vested in a board to vary the application of the regulations of a zoning ordinance authorize the board to make restrictions on the use of the specific property more severe than those imposed by the ordinance itself. 8 A McQuillin Mun. Corp. § 25.271 (3rd Ed. 2009).

THINGS TO THINK ABOUT IN DRAFTING CONDITIONS OF APPROVAL

- Is the condition directly associated with the criteria at issue?
- Relevant to planning?
- Relevant to the particular development permitted?
- Result from issues associated with impacts that the ordinance was meant to address?
- Based on evidence presented (testimony from applicant and neighboring property owners etc.)
- Enforceable?
- Precise? Vague expressions which lack an objective standard may not provide enough guidance about what must be done to comply.

Things to Think About in Drafting Conditions of Approval (cont.)

- For example conditions like “keep the buildings in a tidy state” or to allow certain conduct “so as not to cause annoyance to nearby residents.”
- Reasonable in all other respects? Is it unduly restrictive? Is it possible for the applicant to comply with? Does the applicant need the consent of a third party?



QUESTIONS?

Trina Sears

Assistant Borough Attorney, Mat-Su Borough

(907) 861-8677

Trina.Sears@matsugov.us

